

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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NEXUS GROUP, LLC, a Virgin Islands limited  
liability company,

Case No. 14 CV 9433 (LLS)

Plaintiff,

v.

PRIME LINE NUTRA, LLC a New York limited  
liability company, and BIOGENICS DIRECT, LLC,  
a Florida limited liability company,

Defendants.

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**DEFENDANT BIOGENICS DIRECT, LLC'S  
ANSWER AND AFFIRMATIVE DEFENSES TO FIRST AMENDED COMPLAINT**

Defendant BIOGENICS DIRECT, LLC ("Biogenics"), by and through its undersigned counsel, hereby files its Answer and Affirmative Defenses to Plaintiff NEXUS GROUP, LLC's ("Plaintiff") First Amended Complaint, as follows:

**NATURE OF THE ACTION**

1. Denies the allegations set forth in paragraph 1 of the Complaint, except admits that Plaintiff purports to bring this action for the claims enumerated.

**JURISDICTION AND VENUE**

2. Paragraph 2 is a conclusion of law for which no response is required. To the extent the Court requires a response, Biogenics denies knowledge or information sufficient to form a belief as to the truth of the allegations, and refers all issues of law to the Court for determination.

3. Paragraph 3 is a conclusion of law for which no response is required. To the extent the Court requires a response, Biogenics denies knowledge or information sufficient to form a belief as to the truth of the allegations, and refers all issues of law to the Court for determination.

**PARTIES**

4. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 4 of the Complaint.

5. Admits that Prime Line Nutra, LLC (“PLN”) is a New York limited liability company, but denies knowledge or information sufficient to form a belief as to the truth of the remainder of the allegations set forth in paragraph 5 of the Complaint.

6. Admits that Biogenics is a Florida limited liability company, but denies knowledge or information sufficient to form a belief as to the truth of the remainder of the allegations set forth in paragraph 6 of the Complaint.

**FACTUAL ALLEGATIONS**

7. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 7 of the Complaint.

8. Denies the allegations set forth in paragraph 8 of the Complaint.

9. Denies the allegations set forth in paragraph 9 of the Complaint.

10. Denies the allegations set forth in paragraph 10 of the Complaint and refers to the invoices and emails therein for their full content and meaning.

11. Denies the allegations set forth in paragraph 11 of the Complaint and refers to the email referred to therein for its full content and meaning.

12. Denies the allegations set forth in paragraph 12 of the Complaint and refers to the email referred to therein for its full content and meaning.

13. Admits that Biogenics sent payment to Plaintiff for invoice N1201, however, refers to the email referred to therein for its full content and meaning.

14. Admits that Biogenics made payment to Plaintiff on behalf of PLN.

15. Denies the allegations set forth in paragraph 15 of the Complaint and refers to the email referred to therein for its full content and meaning.

16. Denies the allegations set forth in paragraph 16 of the Complaint and refers to the email referred to therein for its full content and meaning.

17. Admits that Biogenics made payment to Plaintiff on behalf of PLN.

18. Denies the allegations set forth in paragraph 18 of the Complaint and refers to the email referred to therein for its full content and meaning.

19. Admits that Biogenics made payment to Plaintiff on behalf of PLN.

20. Denies the allegations set forth in paragraph 20 of the Complaint and refers to the emails and purported invoice referred to therein for their full content and meaning.

21. Admits that Biogenics made payment to Plaintiff on behalf of PLN and refers to the checks referred to therein for their full content.

22. Denies the allegations set forth in paragraph 22 of the Complaint and refers to the Skype messages referred to therein for their full content and meaning.

23. Denies the allegations set forth in paragraph 23 of the Complaint.

24. Denies the allegations set forth in paragraph 24 of the Complaint.

25. Denies the allegations set forth in paragraph 25 of the Complaint and refers to the email referred to therein for its full content and meaning.

26. Denies the allegations set forth in paragraph 26 of the Complaint.

27. Denies the allegations set forth in paragraph 27 of the Complaint and refers to the email referred to therein for its full content and meaning.

28. Denies the allegations set forth in paragraph 28 of the Complaint and refers to the email referred to therein for its full content and meaning.

29. Denies the allegations set forth in paragraph 29 of the Complaint and refers to the email referred to therein for its full content and meaning.

30. Denies the allegations set forth in paragraph 30 of the Complaint.

31. Denies the allegations set forth in paragraph 31 of the Complaint and refers to the text messages referred to therein for its full content and meaning.

32. Denies the allegations set forth in paragraph 32 of the Complaint and refers to the email referred to therein for its full content and meaning.

33. Denies the allegations set forth in paragraph 33 of the Complaint, refers to the email referred to therein for its full content and meaning, and denies knowledge or information sufficient to form a belief as to the actions of Plaintiff.

34. Denies the allegations set forth in paragraph 34 of the Complaint.

35. Denies the allegations set forth in paragraph 35 of the Complaint.

36. Denies the allegations set forth in paragraph 36 of the Complaint.

37. Denies the allegations set forth in paragraph 37 of the Complaint.

38. Denies the allegations set forth in paragraph 38 of the Complaint.

39. Denies the allegations set forth in paragraph 39 of the Complaint and refers to the text message referred to therein for its full content and meaning.

40. Denies the allegations set forth in paragraph 40 of the Complaint.

41. Denies the allegations set forth in paragraph 41 of the Complaint.

42. Denies the allegations set forth in paragraph 42 of the Complaint.

43. Denies the allegations set forth in paragraph 43 of the Complaint.

44. Denies the allegations set forth in paragraph 44 of the Complaint.

45. Denies the allegations set forth in paragraph 45 of the Complaint.

- 46. Denies the allegations set forth in paragraph 46 of the Complaint.
- 47. Denies the allegations set forth in paragraph 47 of the Complaint.
- 48. Denies the allegations set forth in paragraph 48 of the Complaint.
- 49. Denies the allegations set forth in paragraph 49 of the Complaint.
- 50. Admits the allegations set forth in paragraph 50 of the Complaint.
- 51. Denies the allegations set forth in paragraph 51 of the Complaint.
- 52. Denies the allegations set forth in paragraph 52 of the Complaint.

**RESPONSE TO COUNT I: BREACH OF CONTRACT**

53. Biogenics repeats and re-alleges each and every response set forth in paragraph 1 through 52 above as if same were fully set forth herein.

- 54. Denies the allegations set forth in paragraph 54 of the Complaint.
- 55. Denies the allegations set forth in paragraph 55 of the Complaint.
- 56. Denies the allegations set forth in paragraph 56 of the Complaint.
- 57. Denies the allegations set forth in paragraph 57 of the Complaint.
- 58. Denies the allegations set forth in paragraph 58 of the Complaint.
- 59. Denies the allegations set forth in paragraph 59 of the Complaint.

**RESPONSE TO COUNT II: PROMISSORY ESTOPPEL**

60. Biogenics repeats and re-alleges each and every response set forth in paragraph 1 through 59 above as if same were fully set forth herein.

- 61. Denies the allegations set forth in paragraph 61 of the Complaint.
- 62. Denies the allegations set forth in paragraph 62 of the Complaint.
- 63. Denies the allegations set forth in paragraph 63 of the Complaint.
- 64. Denies the allegations set forth in paragraph 64 of the Complaint.

65. Denies the allegations set forth in paragraph 65 of the Complaint.

**RESPONSE TO COUNT III: UNJUST ENRICHMENT**

66. Biogenics repeats and re-alleges each and every response set forth in paragraph 1 through 65 above as if same were fully set forth herein.

67. Denies the allegations set forth in paragraph 67 of the Complaint.

68. Denies the allegations set forth in paragraph 68 of the Complaint.

69. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 69 of the Complaint.

70. Denies the allegations set forth in paragraph 70 of the Complaint.

71. Denies the allegations set forth in paragraph 71 of the Complaint.

72. Denies the allegations set forth in paragraph 72 of the Complaint.

**RESPONSE TO COUNT IV: QUANTUM MERUIT/QUASI-CONTRACT**

73. Biogenics repeats and re-alleges each and every response set forth in paragraph 1 through 72 above as if same were fully set forth herein.

74. Denies the allegations set forth in paragraph 74 of the Complaint.

75. Denies the allegations set forth in paragraph 75 of the Complaint.

76. Denies the allegations set forth in paragraph 76 of the Complaint.

77. Denies the allegations set forth in paragraph 77 of the Complaint.

78. Denies the allegations set forth in paragraph 78 of the Complaint.

79. Denies the allegations set forth in paragraph 79 of the Complaint.

**RESPONSE TO COUNT V: FRAUD**

80. Biogenics repeats and re-alleges each and every response set forth in paragraph 1 through 79 above as if same were fully set forth herein.

81. Denies the allegations set forth in paragraph 81 of the Complaint.
82. Denies the allegations set forth in paragraph 82 of the Complaint.
83. Denies the allegations set forth in paragraph 83 of the Complaint.
84. Denies the allegations set forth in paragraph 84 of the Complaint.
85. Denies the allegations set forth in paragraph 85 of the Complaint.
86. Denies the allegations set forth in paragraph 86 of the Complaint.
87. Denies the allegations set forth in paragraph 87 of the Complaint.
88. Denies the allegations set forth in paragraph 88 of the Complaint.
89. Denies the allegations set forth in paragraph 89 of the Complaint.

**AS FOR A FIRST AFFIRMATIVE DEFENSE**

1. The Complaint fails to state a claim upon which relief may be granted.

**AS FOR A SECOND AFFIRMATIVE DEFENSE**

2. Plaintiff's claims are barred by the doctrines of unclean hands, bad faith and/or estoppel.

**AS FOR A THIRD AFFIRMATIVE DEFENSE**

3. There was never an agreement and/or privity between Plaintiff and Biogenics and, as such, Plaintiff's claims against Biogenics are barred as a matter of law.

**AS FOR A FOURTH AFFIRMATIVE DEFENSE**

4. Plaintiff's equitable claims of promissory estoppel, unjust enrichment and quantum meruit are barred on the ground that Plaintiff alleges that there was an express agreement between it and PLN.

**AS FOR A FIFTH AFFIRMATIVE DEFENSE**

5. Plaintiff's equitable claims of promissory estoppel, unjust enrichment and quantum meruit are duplicative of its claim for breach of contract.

**AS FOR A SIXTH AFFIRMATIVE DEFENSE**

6. Plaintiff's claim for fraud is duplicative of its claims for breach of contract and its equitable claims of promissory estoppel, unjust enrichment and quantum meruit.

**AS FOR A SEVENTH AFFIRMATIVE DEFENSE**

7. Plaintiff has failed to allege its claim for fraud with the specificity required by the Federal Rules of Civil Procedure.

**AS FOR AN EIGHTH AFFIRMATIVE DEFENSE**

8. Plaintiff failed to provide the services it represented it would provide to PLN and accordingly, is barred from recovering herein.

**AS FOR AN NINTH AFFIRMATIVE DEFENSE**

9. Plaintiff is barred from asserting the claims alleged herein due to its failure to mitigate its damages.

**AS FOR A TENTH AFFIRMATIVE DEFENSE**

10. Plaintiff is barred from asserting the claims alleged herein for failure of consideration.

**AS FOR AN ELEVENTH AFFIRMATIVE DEFENSE**

11. Plaintiff is barred from asserting the claims alleged herein as a result of its own bad faith.



**AS FOR A TWELFTH AFFIRMATIVE DEFENSE**

12. Plaintiff is barred from asserting the claims alleged herein as there was no “meeting of the minds.”

13. Biogenics reserves the right to amend and supplement its Affirmative Defenses as may become necessary as the facts and circumstances are developed through discovery.

**WHEREFORE**, BIOGENICS DIRECT, LLC requests that the Complaint be dismissed in its entirety, together with such other, further and different relief as to the Court seems just and proper.

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that a true copy of the foregoing has been electronically filed with the Clerk of the Court via CM/ECF and that the foregoing document is being served on all counsel of record identified on the attached Service List this 25th day of September, 2015.

Respectfully submitted,

KOPELOWITZ OSTROW P.A.

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and Biogenics Direct, LLC

**SERVICE LIST**

NEXUS GROUP, LLC v. PRIME LINE NUTRA, LLC and BIOGENICS DIRECT, LLC

UNITED STATES DISTRICT COURT  
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